

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23558-2018 (O&M)
Date of decision:17.01.2019

Pawan Kumar

.....Petitioner

versus

State of Haryana and another

....Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Shamlal Bhatia, Advocate for the petitioner.

Mr. Sandeep Vashisth, DAG, Haryana.

Kuldip Singh, J. (Oral)

The petitioner has approached this Court under Article 226/227 of the Constitution of India for issuance of writ of mandamus directing the State to prematurely release the petitioner as per the policy dated 12.04.2002, issued by the State of Haryana as he has already completed 16 years 03 months & 16 days and with remission 21 years 03 months & 17 days and his further detention is violation of Articles 14, 19 & 21 of the Constitution of India.

Petitioner was arrested in a case FIR No.110 dated 28.04.2001 under Sections 376(g), 302, 364, 201 read with Section 34 of Indian Penal Code for allegedly committing the murder of a girl of tender age, aged about 13 years. After the trial, learned Additional Sessions Judge, Panipat vide judgment dated 06.11.2003, sentenced the petitioner to imprisonment for

life. Petitioner claims that he has undergone 16 years 03 months & 16 days of actual imprisonment and with remission, 21 years, 03 months and 16 days. It is further claimed that his case is covered under Clause 2(a) of the Policy dated 12.04.2002 which pertain to convicts who have committed heinous crime and are required to undergo 14 years of actual sentence and with remission 20 years and before completion of the said period, they are not eligible for consideration for premature release.

The State in the reply dated 20.09.2017 has taken the plea that it was a murder after rape/repeated rape/chained rape/unnatural offence, therefore his case is to be considered after completion of 20 years of actual sentence and 25 years of total sentence with remission and his case is covered under Clause 2(aa) of the Policy dated 12.04.2002. As per the stand of the State as on date of filing of the reply, petitioner has undergone 16 years 04 months & 12 days and with remission 21 years, 10 months & 29 days.

I have heard learned counsel for the parties and carefully gone through the file.

I have called for legible copy of the notification and also examined the same. In this case, admittedly, 13 years old girl was raped as coming out from the judgment. I have also gone through the injuries suffered by the deceased as mentioned in the judgment, which shows that a brutal rape was committed and after that, she was done to death. Dead body was later on thrown in the canal for causing disappearance of evidence. Admittedly, Clause 2(a) covers the heinous cases of the convict which have

committed heinous crime mentioned in the said Clause which pertain to murder and certain additional crime. The murder with rape is not covered under the said Clause and any of the sub clauses 2a of policy dated 12.04.2002. The relevant clause claimed by the State is reproduced as under:-

“2(aa) Convicts whose death sentence has been committed to life imprisonment and convicts who have been imprisoned for life having committed a heinous crime such as:-

- (i) Murder after rape repeated/chained rape/unnatural offences.*
- (ii) Murder with intention for the ransom.*
- (iii) Murder of more than two persons.*
- (iv) Persons convicted for second time for murder.*
- (v) Sedition with murder.*

Their cases may be considered after completion of 20 years actual sentence and 25 years total sentence with remission.”

Learned counsel for the petitioner has argued that it is not a case of repeated rape, therefore, his case is not covered under Clause 2(aa)(1) of the Policy dated 12.04.2002, whereas, State has affirmed that murder with rape is covered under the said Clause. The perusal of the said Clause shows that apparently, a 'comma' is missing after the word rape between the word used after 'murder after rape' and repeated/chained rape/un-natural offences. This in my view Clause 2(aa) refer to two different situations/crime i.e. No.I 'murder after rape' and No.II 'repeated/chained rape/un-natural offence' which means that 'murder after rape' is covered under Clause of 2aa(1) and under the second Clause of 2aa(1) 'repeated/chained rape or unnatural

offence' is also covered. Murder after rape is not covered under any other Clause. Therefore, in my considered view, murder after rape is covered under Clause 2aa(1). The deceased in this case after the rape was murdered. The deceased was only 13 years of age. Therefore, the case of the petitioner is covered under Clause 2aa(1) of the policy of the State of Haryana dated 12.04.2002. As such, the case of the petitioner could be considered for premature release after completion of 20 years of actual sentence and with remission 25 years. Consequently, I do not find any force in the present petition.

Dismissed.

(KULDIP SINGH)
JUDGE

17.01.2019

anju rani

Whether speaking/ reasoned:

Yes

Whether Reportable:

No